

WHERE IS THE WORLD GOING in CONSUMER LAW?

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Received: : 31/05/2024

Accepted: 31/05/2024

Published: 01/06/2024

Abstract:

Consumer protection ensures that markets work simultaneously for both businesses and consumers around the world. Consumers need to have access to accurate information about the productions and services they like to buy. This allows them to make choices that are in their best interests and prevents them from being mistreated or misled by managers. Consumer protection intrustions, laws and regulations help increase consumer welfare by holding businesses accountable.

KEYWORDS:

Consumer/ Consumer Protection at National level/EU Consumer Agreements/ Historical Development/UN universal declaration of consumer law.

الملخص:

تضمن حماية المستهلك أن تعمل الأسواق في وقت واحد لصالح الشركات ولصالح المستهلكين في جميع أنحاء العالم. إذ يحتاج المستهلكون إلى الوصول إلى معلومات دقيقة حول المنتجات والخدمات التي يرغبون في شرائها. وهو ما يسمح لهم باتخاذ الخيارات التي تصب في مصلحتهم ويمنعهم من التعرض لسوء المعاملة أو التضليل من قبل المديرين، كما تساعد تعهدات حماية المستهلك والقوانين واللوائح على زيادة رفاهية المستهلك من خلال مساءلة الشركات.

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الكلمات الدالة:

المستهلك، حماية المستهلك على المستوى الوطني، اتفاقيات المستهلك في الاتحاد الأوروبي، التطور التاريخي، إعلان الأمم المتحدة العالمي لقانون المستهلك

Introduction:

Consumer protection has been the subject of intense and heated debate since the early days of widespread trade issues. Here we see that the consumer protection process in the Eastern world (Middle East) started with the Code of Hammurabi. On the other hand, in the Western world (in England) the process of consumer protection emerged with Magna Carta law. Again, with some developments in the Middle Ages and the pressures of new individual and commercial relations that emerged in the later period, the need to introduce standards in this regard arose. But in the modern world; the rules adopted in the United States in this field. Which were followed by European Union regulations aimed at more detailed protection of the consumer.

Today, defining consumer rights is no longer left solely to local national legal systems. Rather, efforts are being made to give consumer rights a global character by adopting as a rule a number of common principles regarding consumer protection at the international level. The place we found on December 22, 2015; With the publication of the Universal Declaration of Consumer Rights, the issue became a problem for the whole world. It can be said that "consumer law" has transcended the "consumer-producer relationship" and turned into a classical private law relationship. Addition to it now appears that "consumer law" has evolved from a problem between the parties to a public law nature.

Now consumer law has been accepted in all parts of the world. International agreements and "consumer law standards of value" that follow these agreements and move in the same direction have been implemented in almost every country. Undoubtedly, the rights of consumers to claim arising from private law relationships in relation to the damages they have suffered are also preserved.

I. IMPORTANCE AND HISTORICAL DEVELOPMENT OF CONSUMER LAW

There is no universally agreed term for consumers, but they are generally known as purchasers of goods and services. Different laws in different countries might define the term according to their varying purposes, context and needs.

The prevalence of deceptive practices and irregularities in the market means that governments have to intervene to safeguard the interests of consumers by recognizing and upholding their rights in various legal instruments, including consumer protection laws. The following figure summarizes the basic rights of consumers that are generally guaranteed in most countries².

Consumer protection is an issue that concerns various branches of both private law and public law. Regulations aiming to prevent the exploitation of consumers by entrepreneurs in their legal transactions in the goods and services markets have been adopted³.

On the other hand, regulations that stipulate mandatory standards in goods offered to consumers and prohibit the use of certain chemicals in food production are primarily aimed at protecting consumers. In order to meet this need;

The purpose of these regulations is mainly to protect the consumer and to establish a balance of justice between the producer and the consumer, and to regulate the provisions regarding consumer protection in international texts on this subject. The feeling felt as a result of these developments. In fact, at the end of the twentieth century, a new branch of law began to develop in Western countries under the name of "consumer law", which is based on consumer rights, aims to

² <https://www.aseanconsumer.org/cterm-consumer-protection/consumer-rights-and-responsibilities>, Date of Access, 20 April 2024.

³ ERGÜL, Ömer, *Tüketici Haklarının Uluslararası ve Ulusal Gelişim Aşamaları*, *Dicle Üniversitesi Adalet Meslek Yüksekokulu Dicle Adalet Dergisi*, Cilt:7, Sayı: 1, Yıl 2023, s. 53.

protect the consumer, and has its own rules and regulations. Institutions should take an active role in solving this problem⁴.

Today, determining consumer rights is no longer left solely to national legal systems; A number of common principles and rules relating to consumer protection have been adopted at the international level, and an attempt has been made to give consumer rights a universal character. It can be said that “consumer law” is evolving towards public law, while its classical relationship with private law is decreasing. In particular, it is worth noting here the studies conducted in the European Union, which is impressive with important regulations on consumer law.

In the European Union, it was accepted that consumer problems could be solved by emphasizing that support for social policies was also very important, alongside economic policies. The first Consumer Protection and Information Policy Program, which was prepared for this purpose, came into effect in 1975.

Regarding the subject, first of all; Special provisions were adopted in the first program covering a five-year period. It aims to address the measures taken against advertising campaigns aimed at consumers who cannot benefit from the advantages of the expanding market and the deterioration of the market balance to the detriment of consumers through strongly organized production and distribution groups that dominate the market. For this reason, it has been stated that some special regulations should be made in the market to ensure a fair balance between consumers and those who provide them with goods and services. However, the most important feature of the first program is that it features the European Consumer Rights Declaration. In the first program, the interests of the consumer that deserve protection are discussed within the framework of five fundamental rights are those titles:

- Protecting consumer health and safety,

⁴ *ÖZEL, Çağlar, Tüketicinin Korunması Hukuku, 8. Baskı, Seçkin Kitapevi, Ankara, 2022, s. 112.*

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- The right to protect the economic interests of the consumer,
- The consumer's right to compensation
- The consumer's right to knowledge and education,
- Consumer right to representation.

These regulations, adopted by the European Union, have been accepted by non-member states over time and put into effect in their countries⁵.

II. FEATURES OF TODAY'S CONSUMER LAW

According to European Consumer Rights document; States' Consumer Policy aims to enable them to make choices based on accurate, clear and consistent information; It is aimed to protect the interests of vulnerable consumers and their own interests. On the other hand, it also means protecting the interests of those who are relatively less able to protect their own interests⁶.

The principle that the goods and services offered to the consumer should not endanger the health and safety of the consumer has been accepted. If such a situation exists, it has been accepted as a principle to ensure that goods or services that endanger health and safety are withdrawn from the markets as soon as possible and that the public is informed about these issues. The right to protection of health and safety is the most important of the fundamental rights because it directly concerns the life and health of the consumer. In the 20th century, consumer protection began to be seen as a part of the health of societies and began to take its place at the highest standards. At the top of these upper norms, naturally, comes the Constitution⁷.

⁵ *ERGÜL, P. 57.*

⁶ <https://www.aseanconsumer.org/cterm-consumer-protection/consumer-rights-and-responsibilities>, Date of Access, 20 April 2024.

⁷ *International Food Standards, Codex Alimentarius, Food and Agricultural Agency of the United Nations, Educational Scientific and Cultural Organization, 2011, P. 15.*

A. GENERAL PRINCIPLES FOR PROTECTION HAVE BEEN ACCEPTED AT THE INTERNATIONAL LEVEL

About the subject; As a United Nations organization; On December 22, 2015; The Universal Declaration of Consumer Rights has been adopted. This declaration has been accepted as “UN Economic and Social Council resolution 1981/62 of 23 July 1981” which was accepted, UN General Assembly resolution 38/147 of 19 December 1983 on consumer protection, The objectives of this declaration are briefly determined below⁸.

Taking into account the interests and needs of consumers in all countries, especially in developing countries, recognizing that consumers often face imbalances in economic conditions, educational levels and bargaining power; and with the idea that consumers should have the right to access non-harmful products, as well as the importance of promoting a fair, impartial and sustainable economic and social development. (Article 1). Undoubtedly, this declaration is not a binding declaration on the member countries. However, it is clear that this international organization, which has the status of an international organization at the highest level, wants the basic principles that it deems important to be determined for the member countries.

B. IT IS GENERALLY PROVIDED IN THE CONSTITUTIONS THAT THE STATE WILL PROTECT CONSUMERS

As mentioned above; “Consumer law” transforms from a private law relationship into a “public law” relationship in many countries. For example, in the current Constitution of the Republic of Turkey, Article 172 titled "Protection of Consumers" states: "The State takes measures to protect and enlighten consumers, and encourages consumers' initiatives to protect themselves." With

⁸ *Those declarations were changed some times. UN Economic and Social Council resolution 1984/63 of 26 July 1984, 26 July 1999 It was stated that it was based on the resolution dated 9 April 1985 and numbered 39/248 and the resolution numbered 1999/7 of the UN General Assembly, after the first declaration.*

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this provision, the protection of consumers is constitutionally guaranteed. With this provision, the State is charged with protecting consumers. Special provisions in this form are included in the Constitutions. With such provisions, the protection of consumers is constitutionally guaranteed and the State is tasked with protecting consumers.

C. THE RULES OF CONSUMER LAW ARE MANDATORY AND EXPAND A LITTLE EVERY DAY

One of the most important features of Consumer Law is that even the private law rules of this branch of law regulating consumer contracts are mandatory rules. The reason for this is to ensure public order by protecting consumers who are weak in the market against negative contract terms that may be created by unlimited freedom of contract, taking into account the public interest.

These cannot be made the subject of an agreement against the consumer, that is, the opposite cannot be decided against the consumer; It is possible to decide otherwise than the provisions in question, provided that it is only in favor of the consumer.

Nowadays; The consumer transaction is considered as follows.

Unthinkable 20 years ago;

- Even the doctor-patient relationship is regulated within the framework of "consumer law" principles.

It has been accepted that goods and services provided to the consumer should not endanger the consumer's health and safety. If such a situation exists, it has been accepted as a principle to ensure that goods or services that endanger health and safety are withdrawn from the market as soon as possible and the public is informed of these issues. In the twentieth century, consumer protection began to be seen as part of the health of societies and began to take its place at the

highest standards. At the top of these higher standards, of course, is the Constitution and other laws.

- “Tourist package trip contracts” at the national and international levels,
- Relations between lawyer and client,
- Power of attorney contracts,
- Bank consumer agreements received as end users,
- Meals eaten in restaurants and cafes,

Disputes are evaluated within the framework of "consumer law"⁹.

D- IN CASES NOT EXPRESSLY PROVIDED IN CONSUMER LAWS; APPLICATION OF GENERAL PROVISIONS

Although it is accepted an independent branch of law, consumer law has a close relationship with other branches of law. In fact, in countries where the consumer protection law is generally applied, general provisions apply in cases where there is no provision in this law. Consumer contracts, which constitute the main subject of consumer law, are essentially debt contracts.

E- CONSUMER LAW; TWO SEPARATE PROTECTIONS ARE INTRODUCED TO THE CONSUMER MATERIAL WHEN IT IS POSSESSED AND AFTER IT IS CONSUMED:

Unique Characteristics of Consumer Law Consumer Law's regulations for consumer protection are divided into two groups.

⁹ <http://www.tukcev.org.tr/mevzuat/tuketici-mevzuati/birlesmis-milletler-tuketici-haklari-evrensel-bildirgesi>, Date of Access, 15 March 2024.

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It aims to protect the consumer before goods or services are provided to him, before he suffers a loss.

1- There are rules that aim to protect the consumer after goods or services are provided or the consumer suffers damage. The rules in the first group are public law rules that control and limit industrial and commercial activities in favor of the consumer. For example, industrial goods are given a minimum warranty of 2-5 years, depending on the situation, and these guarantees are made under the supervision of public authorities.

2- The rules in the second group are private law rules that essentially regulate some contracts to which consumers are parties or provide compensation for the damages suffered by consumers¹⁰.

F- COMMENT ON CONSUMER LAW

It is a matter known to everyone that the contract texts in consumer contracts are almost always prepared by the seller or provider, that is, the entrepreneurs. For this reason, since these documents have no contribution and carry more risks than the resulting legal relationship; In Consumer Law, the "interpretation in favor of the consumer" rule has become a general principle.¹¹.

There has been a strong need for special legal protection to restore balance around the need for consumer protection. When we compare the resolution of disputes between equals and the resolution of disputes between the strong and the weak, it is accepted as a general principle among lawyers that the justice mechanism in Consumer Law should make much more detailed and specific evaluations and approach the consumer. Disputes are different from other disputes. It also directed legislators to make new regulations.

¹⁰ ALTINER YOLCU, Fatma Zeynep, *The Historical Evolution of Consumer Protection and its Reflections to Turkish Law*, Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi • Cilt 24, Sayı 2, Aralık 2018,, s. 118.

¹¹ AKİPEK ÖCAL, Şebnem, <https://www.barobirlik.org.tr/Haberler/tbb-tuketici-haklari-komisyonu-tarafindan-tuketici-hukukunda-guncel-uygulama-ve-gelismeler-konulu--84274>, Date of Accses, 18 March 2024.

G- CONCERNING THE PROTECTION OF CONSUMERS, SPECIAL "CONSUMER COURTS" OR "CONSUMER ARBITRATION COMMITTEES" HAVE BEEN IN THE STAGE OF ESTABLISHING.

Consumer transaction is considered as any contract or legal transaction made between consumers and real or legal persons acting for commercial or professional purposes or acting on their behalf or on their account. Advances in industry and technology are taking place rapidly and with great leaps; It has enabled companies to offer products of different quality, price, standards and qualities to the market day by day. While all these developments have made it easier to meet the needs of human beings, they have also caused social life, needs and problems to reach different dimensions and scopes. Therefore, people's complaints about the quality, price, health, safety, warranty and technical service of the goods and services offered to the market have also increased. These problems have revealed the necessity of consumer protection and how important consumer rights are.

The 8 rights declared by the International Organization of Consumer Associations put pressure on the administrations and led to the formation of Consumer courts¹².

Consumer law in relations between two parties is becoming more complex every day. However, it is also a fact that general courts are not specialized on this issue. The idea of establishing "Consumer courts" has developed to solve consumer-related problems. Specialized "consumer courts" have been legally established in many countries.

H- THE SHARE OF THE STATE'S ADMINISTRATIVE SUPERVISION IN CONSUMER PROTECTION IS VERY LARGE

¹² KAYALI, Fusun, *Tüketicinin Korunması ve Korunması ve Tüketici Hakları Konusundaki Bilgi Düzeyinin Tütecinin Korunmasındaki Rolü, Balıkesir Üniversitesi, Sosyal Bilimler Enstitüsü, Balıkesir, 2008, s. 2 v.d.*

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Leaving the duty in consumer law only to the Courts is far from the practice of life. Therefore, governments need to establish very important control mechanisms to protect consumers and protect their rights. Many Governments or administrative units exercising government authority, especially in European Union countries; They adopted mechanisms that will establish a control mechanism starting from the production stage, ensure that production is carried out in a healthier and more hygienic environment, and take precautions until the supply stage to the consumer.

There is no data showing that the fact that administrative mechanisms should "provide greater protection in terms of consumer protection" is adequately responded to in practice. As a matter of fact, claims that administrative controls are not very effective, except for the USA, EU countries and a few countries, are expressed very strongly. On the other hand, there is no data showing that "food laboratories", which have a very important function in protecting consumers, have become widespread enough.

Especially in recent years, when we look at the "administrative decisions" regarding food law, it can be seen that states have developed many regulations, implemented very strong control mechanisms, and sometimes these standards are aimed at "standardization at the international level" . It can be concluded that this area of law is a modern manifestation of the idea of consumer protection¹³.

One of the places where consumer law is most evaluated is "food laboratories". Any report coming out of these places would very quickly change people's behavior regarding the property in question. In countries that have reached the level of prosperity, the requested food laboratory analysis results during the import of foodstuffs emerge as an important factor in exports and imports. For this reason, it is also stated that third world countries that will export the relevant food item have recently become sensitive on this issue and tend to export goods as stated in the UN declaration and EU directives.

¹³ *ALTINER, s. 119.*

CONCLUSION:

-Very important principles have been adopted at the world level in terms of "consumer protection", especially the United Nations consumer rights declaration and the European Union consumer protection directives. It is also seen that a significant part of these are reflected in the domestic law of the member countries.

-As consumer transactions change a lot in the world, demands for change in regulations regarding the protection of consumers are also rapid. As a matter of fact, in the changes and developments regarding consumer rights, it can be seen that the field of "Consumer law" is developing rapidly in the countries that have accepted the relevant declaration or in the EU member states and the USA. Regarding these developments; In the world, "standard principles" have been accepted and it seems that consumer protection is more involved through these principles.

- In order to protect consumers, it is seen that the consent of the parties is also given importance in addition to the new provisions and mandatory provisions. These developments are expressed as an indicator of the gains achieved in the field of "consumer law" worldwide and are a positive success in this respect. However, despite all this, this does not mean that there are no problems with consumer protection. In a significant part of the world, the word

There is no data regarding the implementation of the issues in the UN declaration or EU directives.

-On the other hand, efforts to determine standards for the protection of consumers and to establish accepted "Consumer Courts" show the importance given to consumer rights. It is possible to say that "legal regulations" for consumer protection have made a serious breakthrough worldwide.

- There is also a lack of food laboratories, which provide a very important evaluation regarding consumer protection. Food analysis aims to reduce the risks

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that may arise and prevent the occurrence of these risks¹⁴. It reveals whether food products are made within the limits of human health and the environment in all processes until they are presented to the consumer.

At each stage, it is also expressed out loud. This situation also indicates that there are problems in the export-import process. Because the laws and practices are different in two different countries and the slowdown in compliance with the rules set in contracted countries can be said to be a negative situation for consumers.

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